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WATANABE ING & KOMEIJI LLP  
 A Limited Liability Law Partnership

JOHN T. KOMEIJI #2498-0  
 GREGG M. USHIRODA #5868-0  
 KAREN Y. ARIKAWA #7684-0  
 23rd Floor, First Hawaiian Center  
 999 Bishop Street  
 Honolulu, Hawaii 96813  
 Telephone No.: (808) 544-8300  
 Facsimile No.: (808) 544-8399  
 E-Mail: gushiroda@wik.com

Attorneys for Defendant  
 JANE CALFEE

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

JOHN MCALLISTER,	)	Civil No. CV 04-00625 JMS BMK
	)	
Plaintiff,	)	DEFENDANT JANE CALFEE'S
	)	MEMORANDUM IN OPPOSITION TO
vs.	)	PLAINTIFF'S MOTION TO STRIKE
	)	DEFENDANTS' INCOMPLETELY
UNIVERSITY OF HAWAI'I;	)	IDENTIFIED WITNESSES 12-35
KAPIOLANI COMMUNITY COLLEGE;	)	FILED JANUARY 18, 2006;
JANE CALFEE, Instructor at	)	DECLARATION OF GREGG M.
Kapiolani Community College;	)	USHIRODA; EXHIBITS "A" - "B";
RICHARD DOE, Academic Counselor	)	CERTIFICATE OF SERVICE
at Kapiolani Community College;	)	
JILL MAGNAGON, Director of	)	
Academic Counseling at	)	
Kapiolani Community College;	)	
MONA LEE, Dean of Student	)	
Services at Kapiolani Community	)	
College,	)	
	)	
Defendants.	)	HEARING
	)	DATE: February 10, 2006
	)	TIME: 2 p.m.
	)	JUDGE: Hon. Barry M. Kurren
	)	
	)	TRIAL DATE: March 7, 2006

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**DEFENDANT JANE CALFEE'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' INCOMPLETELY  
IDENTIFIED WITNESSES 12-35 FILED JANUARY 18, 2006**

Comes now Defendant JANE CALFEE (Jane Calfee), by and through her attorneys, WATANABE ING & KOMEIJI LLP, and hereby respectfully submits the following Memorandum in Opposition to Plaintiff's Motion to Strike Defendants' Incompletely Identified Witnesses 12-35 Filed January 18, 2006 ("Motion to Strike").

**I. INTRODUCTION**

Plaintiff filed his Motion to Strike months after the deadlines set by the Court's scheduling order and the applicable procedural rule. Therefore, the Motion to Strike is untimely and must be denied.

**II. RELEVANT FACTUAL BACKGROUND**

1. On January 11, 2005, the Court issued the Rule 16 Scheduling Order, which required that all non-dispositive motions be filed by August 17, 2005. See Rule 16 Scheduling Order filed on January 11, 2005, attached as Exhibit "A" to the Declaration of Gregg M. Ushiroda.

2. On September 21, 2005, the Defendants in the above-captioned lawsuit ("Defendants") filed and served upon Plaintiff the Defendants' Rule 26 Disclosures ("Disclosures"). See Defendants' Rule 26 Disclosures and Certificate of Service filed on September 21, 2005, attached as Exhibit "B" to the Declaration of Gregg M. Ushiroda.

3. On January 18, 2006, Plaintiff filed his Motion to Strike. See Motion to Strike.

4. Before January 18, 2006, Plaintiff has never formally raised, via motion or otherwise, the issue of his inability to contact or communicate with the witnesses listed as 12-35 in the Disclosures.

### **III. ARGUMENT**

The Rule 16 Scheduling Order required that all non-dispositive motions be filed by August 17, 2005. See Exhibit "A" at 2. Notwithstanding this clear mandate, Plaintiff filed his Motion to Strike on January 18, 2006, five months late without leave of Court. This alone should justify the denial of Plaintiff's Motion to Strike.

In addition to the foregoing, however, Plaintiff also failed to comply with Rule 12(f) of the Federal Rules of Civil Procedure, which requires parties to file motions to strike within 20 days after the service of the objectionable pleading upon that party. See Fed. R. Civ. P. 12(f). If it really is true that "Plaintiff is at a great disadvantage [for] not being able to contact and communicate with these proposed witnesses," Plaintiff should have raised this issue in a much more timely manner. He had ample time to file a motion, but, due to his inexcusable neglect, he failed to do so. Therefore, the Motion to Strike must be denied.

**IV. CONCLUSION**

Based on the foregoing and any other arguments raised by any memorandum in opposition filed by the other Defendants in the instant action, Jane Calfee respectfully requests the Court to deny the Motion to Strike.

DATED: Honolulu, Hawaii, January 30, 2006.

/s/ Gregg M. Ushiroda

JOHN T. KOMEIJI  
GREGG M. USHIRODA  
KAREN Y. ARIKAWA  
Attorneys for Defendant  
JANE CALFEE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN MCALLISTER,	)	Civil No. CV 04-00625 JMS BMK
	)	
Plaintiff,	)	DECLARATION OF GREGG M.
	)	USHIRODA
vs.	)	
	)	
UNIVERSITY OF HAWAI`I;	)	
KAPIOLANI COMMUNITY COLLEGE;	)	
JANE CALFEE, Instructor at	)	
Kapiolani Community College;	)	
RICHARD DOE, Academic Counselor	)	
at Kapiolani Community College;	)	
JILL MAGNAGON, Director of	)	
Academic Counseling at	)	
Kapiolani Community College;	)	HEARING
MONA LEE, Dean of Student	)	DATE: February 10, 2006
Services at Kapiolani Community	)	TIME: 2:00 p.m.
College,	)	JUDGE: Hon. Barry M. Kurren
	)	
Defendants.	)	TRIAL DATE: March 7, 2006
	)	

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DECLARATION OF GREGG M. USHIRODA

GREGG M. USHIRODA declares as follows:

1. I am an active member in good standing of the Bar of this Court, and am currently counsel of record for Defendant Jane Calfee in this action.

2. I make this declaration based on personal knowledge and am competent to testify as to all matters stated herein.

3. Attached hereto as Exhibit "A" is a true and correct copy of the Rule 16 Scheduling Order, filed January 11, 2005.

4. Attached hereto as Exhibit "B" is a true and

correct copy of Defendants' Rule 26 Disclosures and Certificate of Service, filed September 21, 2005.

5. Upon information and belief, before January 18, 2006, Plaintiff has never formally raised, via motion or otherwise, the issue of his inability to contact or communicate with the witnesses listed as 12-35 in the Defendants' Rule 26 Disclosures.

Dated: Honolulu, Hawaii, January 30, 2006.

/s/ Gregg M. Ushiroda  
GREGG M. USHIRODA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN MCALLISTER,	)	Civil No. CV 04-00625 JMS BMK
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
UNIVERSITY OF HAWAII;	)	
KAPIOLANI COMMUNITY COLLEGE;	)	
JANE CALFEE, Instructor at	)	
Kapiolani Community College;	)	
RICHARD DOE, Academic Counselor	)	
at Kapiolani Community College;	)	
JILL MAGNAGON, Director of	)	
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	)	
Defendants.	)	TRIAL DATE: March 7, 2006
	)	

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was duly served on each of the following in the manner specified below, on January 30, 2006, addressed as follows:

	Mailed	Delivered
ANDRE S. WOOTEN, ESQ. 1188 Bishop Street, Suite 1909 Honolulu, Hawaii 96813		X
Attorney for Plaintiff JOHN MCALLISTER		

Mailed      Delivered

WALTER S. KIRIMITSU, ESQ.  
RUTH I. TSUJIMURA, ESQ.  
RYAN M. AKAMINE, ESQ.  
CHRISTINE TAMASHIRO, ESQ.  
University of Hawaii  
2444 Dole Street, Bachman Hall 110  
Honolulu, Hawaii 96822

X

Attorneys for Defendants  
UNIVERSITY OF HAWAI'I,  
KAPI'OLANI COMMUNITY  
COLLEGE, JILL MAKAGON  
(incorrectly identified as Jill  
Magnagon) and MONA LEE

DATED: Honolulu, Hawaii, January 30, 2006.

/s/ Gregg M. Ushiroda  
JOHN T. KOMEIJI  
GREGG M. USHIRODA  
KAREN Y. ARIKAWA  
Attorneys for Defendant  
JANE CALFEE